

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Roger Allen Dyke, # 347604,

Plaintiff,

vs.

Bernard Mackie, Director of Security;
Michael McCall, Director of Operations;
Larry Cartledge, Warden;
C. Early, Major;
S. Dufft, Cpt.;
Cpt. Goldden;
Lt. Blackbun;
Lt. McCall;
F. Rice, Sgt.;
Ofc. Williams;
Ofc. Collins;
J. Johnson, Ofc.;
Nurse Gillheart;
Ofc. Garner;
Cpl. King;
A. Cagle, Sgt.;
Nurse Burgess;
A. Goodwin, Mental Health Counselor;
Director Sterlin, SCDC;
Ms. Hendenberg, Grievance Counselor,

Defendants.

) C/A No. 6:16-279-TMC-KFM

) **REPORT AND RECOMMENDATION**

On January 25, 2016, the plaintiff, proceeding *pro se*, filed this action alleging civil rights violations pursuant to 42 U.S.C. § 1983 (doc. 1). On May 10, 2016, the undersigned authorized service of process (doc. 31). The summons was returned unexecuted with respect to Defendants Ofc. Garner, Nurse Gillheart, J. Johnson, Cpl. King, and Ofc. Williams (collectively, "the unserved defendants") on June 21, 2016 (doc. 36). The summons was returned executed with respect to the remaining defendants (doc. 38). On July 13, 2016, the undersigned ordered the plaintiff to complete and return new summonses and Forms USM-285 for the unserved defendants by August 8, 2016 (doc. 43). The plaintiff was told that if he could not provide new addresses or complete name descriptions for the

unserved defendants, he must notify the Court whether he agreed to dismiss them or required more time to serve them (*id.*). The plaintiff was warned that he was responsible for providing information sufficient to effect service on the unserved defendants, and that they could be entitled to dismissal if he failed to respond to the order (*id.*).

To date, the plaintiff has not responded to the order or provided any information on the unserved defendants.

Rule 4(m), Fed. R. Civ. P., states, in relevant part:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Here, the time for service began to run on May 11, 2016, the date the summons in this case were issued by the Clerk, and the 90-day period for service provided by Rule 4(m) expired on August 9, 2016. Further, the plaintiff was specifically warned that the unserved defendants were subject to dismissal if he failed to respond to the court order. Accordingly, it is recommended that defendants Ofc. Garner, Nurse Gillheart, J. Johnson, Cpl. King, and Ofc. Williams be dismissed for violation of Rule 4, Fed. R. Civ. P.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

August 18, 2016
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).